



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 19-01645
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison Marie, Esq., Department Counsel

For Applicant: *Pro se*

09/01/2022

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his unresolved delinquent debts. His request for a clearance is denied.

Statement of the Case

On February 12, 2021, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew his eligibility for a security clearance required for his employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance. An affirmative determination is required by

Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2,

On August 7, 2021, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline (AG) for financial considerations (Guideline F). The guideline cited in the SOR is among those issued by the Director of National Intelligence (DNI) on December 10, 2016, to be effective for all adjudications on or after June 8, 2017. Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on April 8, 2022. I scheduled a hearing to be held on June 29, 2022, via an online video-teleconferencing system. The parties appeared as scheduled, and Applicant testified in his own behalf. Department Counsel proffered Government Exhibits (GX) 1 – 6. Additionally, a copy of the Government's list of exhibits and a discovery letter dated July 22, 2021, were included in the record as Hearing Exhibits (HX) 1 and 2, respectively. Applicant did not produce any documents at hearing. I received a transcript of the hearing (Tr.) on July 8, 2022.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$51,262 for 11 delinquent or past-due debts (SOR 1.a – 1.k). In response, Applicant admitted with explanations all of the allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is 47 years old. He enlisted in the United States Marine Corps in November 1995 and retired as a staff sergeant in December 2015. Thereafter, he worked for a federal contractor until August 2019. Between September 2019 and August 2020, he was unemployed except for two months, when he worked as a landscaper and at a retail store. He has worked for his current employer since September 2020. (GX 1; GX 3; Tr. 22 – 26, 32)

Applicant first received a security clearance after he entered on active duty in 1995. In March 2015, he submitted an e-QIP to renew that clearance. The ensuing background investigation produced information that supports all of the SOR allegations. The debts at issue became delinquent between 2014 and 2018. Only one debt (SOR 1.c) has been paid; however, that debt was for a delinquent military exchange system credit card that was resolved involuntarily when the creditor garnished the past-due amount from Applicant's retired pay. (GX 3 – 6; Tr. 48)

Applicant has been married three times. He and his current wife were married in July 2009 and have two minor children together. He attributes his financial problems to what he claims was his wife's financial malfeasance while he was deployed overseas between August 2010 and May 2011. He claims she abused a general power of attorney

he gave her before he deployed. He avers she drained their bank accounts and ran up numerous debts that went unpaid. She then took their (at the time only) child and moved to another state near her mother. Upon his return from deployment, Applicant reconciled with his wife and she returned to their home near his duty station. Thereafter, they had their second child; however, they again separated in 2016. As of the hearing, neither had filed for divorce, but Applicant has recently contacted a law firm to pursue filing. (Answer; AX 2; Tr. 26 – 32, 57 – 58)

Aside from SOR 1.c, discussed above, Applicant has not paid or otherwise resolved any of the delinquent debts attributed to him in the Government's exhibits. In his March 2021 response to the SOR, he indicated his expectation that the debts at SOR 1.a, 1.b, 1.f, 1.h, and 1.i would fall off his credit report after seven years because they have been charged off as business losses. As to SOR 1.j and 1.k, he stated his intention to resolve those debts by May 2021, but acknowledged at hearing that he had not yet paid them. He further stated that the SOR 1.g debt, the remainder after resale of a car repossession, was the responsibility of his estranged wife. Although it appears in one of his credit reports as a joint account, he did not present any information to support his claim. (Answer; Tr. 35 – 41)

Finally, he thought he had paid the medical bills alleged at SOR 1.d and 1.e, but he has no proof of that claim. According to a 2020 credit report, those debts were first reported as delinquent in 2018. They do not appear on a 2021 credit report. Absent additional information from the Applicant, the status of these debts is unclear in this record. (GX 4 – 6; Tr. 41)

Applicant testified that he does not intend to pay for any debts that he feels are his wife's responsibility. SOR 1.a is the only debt listed as a joint account. He did not provide any information that shows she is responsible for any of the debts in the SOR. As of the hearing, he planned to list all of his debts in a petition for divorce (not yet filed) so that responsibility for the debts could be shared with his wife. (GX 5; Tr. 49 – 51)

In addition to the income Applicant receives for his work as a defense contractor, he receives disability pay from the Department of Veterans Affairs (VA) and his retired military pay. Most of his retired pay is allocated to his wife for the support of their children. After paying his regular monthly expenses, he has as much as \$3,000 remaining each month. He does not use that money to pay off any of his past-due debts, choosing instead to spend his extra money on other things. (Tr. 34, 42 – 45, 54 – 55)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the

factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See *Department of the Navy v. Egan*, 484 U.S. 518)

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See *Egan*, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. (See *Egan*; AG ¶ 2(b))

Analysis

Financial Considerations

The Government met its burden of producing sufficient, reliable information to support all of the SOR allegations that Applicant accrued significant past-due or delinquent debt that, with one exception, is still outstanding. Available information shows that he has not acted to pay or otherwise resolve any of the debts listed in the SOR despite having significant positive cash flow each month since starting his current employment in September 2020. This information reasonably raises a security concern about Applicant’s finances that is articulated at AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Available information also requires consideration of the following pertinent AG ¶ 20 mitigating conditions:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

After a thorough review of this record, I conclude that none of these mitigating conditions can be applied. In response to the Government's *prima facie* case for disqualification, Applicant showed that only the debt at SOR 1.c has been addressed. In that instance, payment was made only through involuntary garnishment of funds from his military retired pay. All of the remaining debts listed in the SOR are still unresolved. Accordingly, his financial problems are recent and continuing.

It may be that Applicant's financial problems arose through the unexpected circumstance of his wife's financial malfeasance; however, the record does not support a conclusion that he acted responsibly given those circumstances. While he claims many of the debts at issue were wrongly incurred by his wife, he offered no proof of that claim. He further asserted that he will include the debts in a divorce petition he has yet to file after six years of separation.

Finally, there has been no good-faith effort to pay here. Applicant has referenced the fact that many of his debts are no longer at issue because they have "aged off" his credit history. That may be true; however, it generally does not reflect well on a person's reliability if they seek to avoid paying their debts by waiting for a technicality to take effect. In this case, Applicant has relied on the age of several of his debts as a means to resolve them. His lack of action on any of his debts, despite having the means to resolve several of them over at least the past two years, shows that he has not taken his responsibilities seriously in this regard and that his financial problems are likely to persist.

Applicant has not sought any professional financial assistance in addressing his financial problems. Further, he did not present any information that shows he manages his personal finances in a way that would help him avoid such financial problems in the future. On balance, I conclude Applicant has not met his burden of persuasion and that he has not mitigated the security concerns established by the Government's information.

I also have considered the potential application of AG ¶ 20(e). The record evidence as a whole sustains the significant doubts about Applicant's suitability for access to classified information that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.d – 1.k:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge